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**CITY OF ALBUQUERQUE**  
**CITY COUNCIL**

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**INTEROFFICE MEMORANDUM**

**TO:** David S. Campbell, Director, Planning Department

**FROM:** Stephanie M. Yara, Director, Council Services

*SMY 6/25/19*

**SUBJECT:** Bill No. OC-19-31

**DATE:** June 24, 2019

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The attached Other Communication (OC) was introduced by the City Council on June 17, 2019. The intent of the OC is to facilitate the remand by the Second Judicial District Court of a zone map amendment that was previously approved by the EPC and affirmed by the City Council.

We request that you submit this matter to the Environmental Planning Commission for a hearing as soon as practicable.

Thank you.

**cc:** Russell Brito, Division Manager, Urban Design & Development, Planning Department  
File OC-19-31

OC-19-31

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**CITY OF ALBUQUERQUE**  
**CITY COUNCIL**

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**INTEROFFICE MEMORANDUM**

**TO:** Klarissa J. Peña, City Council President  
**FROM:** Stephanie Yara, Director of Council Services  
**SUBJECT:** Remand to EPC- Alameda Drain/Campbell Ditch  
**DATE:** June 14, 2019

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On October 16, 2017, the City Council voted to adopt the LUHO's recommendation regarding an appeal of a zone change for property located North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approximately 20 acres.

The 2<sup>nd</sup> Judicial District Court has the remanded the matter back to the City for further consideration of:

- 1) Whether the proposed C-2 zone is in significant conflict with purported NVAP limitations on commercial development; and
- 2) Whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, neighborhood, or community.

The Court's opinion and order is attached.

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

DARLENE M. ANAYA,  
Appellant,

v.

THE CITY OF ALBUQUERQUE,  
Appellee.

FILED  
2nd JUDICIAL DISTRICT COURT  
Bernalillo County  
1/7/2019 2:20 PM  
James A. Noel  
CLERK OF THE COURT  
Patsy Baca

D-202-CV-2017-08276

### **MEMORANDUM OPINION AND ORDER**

This matter is before the Court on appeal of a decision by the City of Albuquerque (City) approving a zone map amendment. The decision is **AFFIRMED** as to all issues except two. With respect to these two issues, the matter is **REMANDED** for additional consideration by the City.

#### **I. FACTS AND BACKGROUND**

The record reflects the following facts. The zone change site is approximately 20 acres of currently vacant land immediately north of Interstate 40 and just east of Rio Grande Boulevard between the Alameda irrigation ditch and the Campbell irrigation ditch. The zone change site currently contains two zone categories: the northern portion, consisting of 14.21 irregularly-shaped acres, is zoned R-1 (residential); the southern portion, consisting of 5.26 acres, is zoned M-1 (light industrial).

The City approved an application for a zone map amendment that would result in three zone categories: the northernmost approximately two acres would remain R-1; approximately eight acres across the middle of the site would be changed from R-1 to R-2; the southernmost portion, which currently consists of part R-1 and part M-1, would be changed to C-2. The proposed C-2 zone is nearly double the size of the existing M-1 zone. According to the City, the proposed C-2 zone would allow for a wide variety of office, commercial and service uses, and some institutional uses generally of a lower intensity than is allowed by the existing M-1 zone.

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The Environmental Planning Commission (EPC) voted to approve the changes and issued an official Notification of Decision on July 14, 2017. [RP 00251–61.] Appellant Darlene Anaya (Anaya) and the North Valley Coalition appealed the EPC’s decision to the City Council, which referred the matter to a land use hearing officer (LUHO). The LUHO held a hearing on September 21, 2017. On October 2, 2017, the LUHO issued a written decision recommending to the City Council that the appeals be denied and the EPC’s decision to approve the zone changes be affirmed. On October 16, 2017, the City Council voted to adopt the LUHO’s recommendation. This appeal followed.

## **II. STANDARD OF REVIEW**

This Court applies the following standard of review:

- (1) whether the agency acted fraudulently, arbitrarily or capriciously;
- (2) whether based upon the whole record on review, the decision of the agency is not supported by substantial evidence;
- (3) whether the action of the agency was outside the scope of authority of the agency; or
- (4) whether the action of the agency was otherwise not in accordance with law.

Rule 1-074(R) NMRA. “Decisions of a municipality are presumably valid and the burden of proving otherwise rests upon a party seeking to void such decision.” *Embudo Canyon Neighborhood Ass’n v. City of Albuquerque*, 1998-NMCA-171, ¶ 8, 126 N.M. 327 (citation omitted).

When reviewing an administrative decision for arbitrary or capricious conduct, the Court reviews “the whole record to ascertain whether there has been unreasoned action without proper consideration or disregard of the facts and circumstances.” *Paule v. Santa Fe County Bd. of County Comm’rs*, 2005-NMSC-021, ¶ 30, 138 N.M. 82 (citation and quotation marks omitted). “Where there is room for two opinions, the action is not arbitrary or capricious if exercised

honestly and upon due consideration, even though another conclusion might have been reached.”  
*Perkins v. Dep’t of Human Servs.*, 1987-NMCA-148, ¶ 20, 106 N.M. 651 (citation omitted).

The reviewing court also is obligated to review the entire record to determine whether the zoning authority’s decision is supported by substantial evidence. *Paule*, 2005-NMSC-021, ¶ 32. The Court views the evidence in the light most favorable to the decision. *Id.* “Substantial evidence means relevant evidence that a reasonable mind would accept as adequate to support a conclusion.” *Id.* (citation and quotation marks omitted). “The district court does not determine if the opposite result is supported by substantial evidence because it may not substitute its judgment for that of the administrative body.” *Hart v. City of Albuquerque*, 1999-NMCA-043, ¶ 9, 126 N.M. 753 (citation omitted).

### **III. DISCUSSION**

#### **A. Resolution 270-1980**

The substantive standards that apply to zone change applications are set forth in the City’s Resolution 270-1980. *See Albuquerque Commons P’Ship v. City of Albuquerque*, 2008-NMSC-025, ¶ 28, 144 N.M. 99 (citing *W. Old Town Neighborhood Ass’n v. City of Albuquerque*, 1996-NMCA-107, ¶ 18, 122 N.M. 495). Resolution 270-1980 contains the following provisions that are relevant to Anaya’s arguments:

B. Stability of land use and zoning is desirable; therefore, the applicant must provide a sound justification for the change. The burden is on the applicant to show why the change should be made, not on the City to show why the change should not be made.

C. A proposed change shall not be in significant conflict with the adopted elements of the Comprehensive Plan or other City master plans and amendments thereto including privately developed area plans which have been adopted by the City.

D. The applicant must demonstrate that the existing zoning is inappropriate because:

- (1) there was an error when the existing zone map was created, or
- (2) changed neighborhood or community conditions justify the change, or

(3) a different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other City master plan, even though (1) or (2) above do not apply.

E. A change of zone shall not be approved where some of the permissive uses in the zone would be harmful to adjacent property, the neighborhood or the community.

\* \* \*

G. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a change of zone.

\* \* \*

I. A zone change request which would give a zone different from surrounding zoning to one small area, especially when only one premise is involved, is generally called a "spot zone." Such a change of zone may be approved only when:

(1) the change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan, or

(2) the area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises make the site unsuitable for the uses allowed in any adjacent zone.

Resolution 270-1980, § 1(B)–(E), (G), (I).

## **B. Analysis**

### **1. Section 1(C)**

Zone changes are not permitted if they are in significant conflict with applicable City Plans. Resolution 270-1980, § 1(C). The EPC's decision identifies three applicable plans: the Comprehensive Plan; the North Valley Action Plan (NVAP); and the Alameda Drain and Trail Master Plan (Alameda Trail Plan). Anaya argues the proposed C-2 zone conflicts with each of these plans. The Court addresses each plan in turn.

#### **a) Comprehensive Plan**

Anaya argues the scope of the proposed C-2 zone is inappropriate because it infringes on an area the Comprehensive Plan designates an "Area of Consistency." The question Anaya's argument raises is whether the EPC's determination that the proposed change is not in significant

conflict with the Comprehensive Plan is arbitrary or capricious. The Court concludes, as did the LUHO, that it is not.

The Comprehensive Plan identifies two “Development Area” designations: Areas of Change and Areas of Consistency. Area of Change is defined as:

a City Development Area category where growth is desired and can be supported by multi-modal transportation[.] Development of higher density and intensity, typically with a mix of uses, is encouraged within Areas of Change.

[Comp. Plan at A-2.] The Comprehensive Plan defines Area of Consistency as:

a City Development Area category that includes single-family residential neighborhoods, parks, Open Space, and parcels where further development is not desired, such as airport runways. In Areas of Consistency, the focus is on protecting and enhancing the character of single-family neighborhoods and green spaces. Revitalization and development that do occur should be at a scale and density (or intensity similar to immediately surrounding development in order to reinforce the existing character of established neighborhoods.

[Comp. Plan at A-2–A-3.]

A portion of the zone change site—generally the southern portion—is designated by the Comprehensive Plan as an Area of Change. The remaining—generally northern portion—is designated an Area of Consistency. The record is not clear on the exact location of the boundary between the Area of Change and the Area of Consistency, but it is undisputed that these two designations lie adjacent to one another within the zone change site.

The EPC acknowledged that the proposed C-2 zone extends beyond the Area of Change into an area the Comprehensive Plan designates an Area of Consistency. The EPC nevertheless found that the proposed changes not only did not significantly conflict with the Comprehensive Plan, but actually further numerous goals and policies contained in the Comprehensive Plan. The decision of the EPC lists the specific Comprehensive Plan objectives the proposed changes further and explains them in considerable detail. These include: (1) promoting desired growth in this location by encouraging employment density, compact development, redevelopment, and

infill; (2) fostering existing major transit corridors (I-40 and Rio Grande Boulevard) while minimizing negative impacts on nearby neighborhoods by providing a step-down transition from more intense commercial uses adjacent to I-40 and Rio Grande Boulevard, to medium density residential, to single family residential; (3) and promoting desirable land use by facilitating redevelopment of the subject area which has long been vacant. In addition, the zone change from R-1 to R-2 will allow for a wider variety of housing options than currently exist and in an area where a mix of uses is already established. [RP 00252-56.]

Both the EPC and the LUHO explained how the changes also would serve the Comprehensive Plan policy of providing buffers and transitions between various use intensities, in this case, a buffer between commercial and residential uses. Specifically, although the proposed C-2 zone is larger than the current M-1 zone and would extend from an Area of Change into an Area of Consistency, the transition from C-2 to R-2 would be less abrupt than the current transition from M-1 to R-1. Furthermore, the new R-2 zone would provide a buffer or transition between the existing R-1 and the new C-2.

Anaya acknowledges that the portion of the site currently zoned M-1 is an Area of Change but argues that extending the C-2 zone beyond the Area of Change into the Area of Consistency conflicts with the Comprehensive Plan. However, the Comprehensive Plan does not prohibit zone changes or development from occurring in an Area of Consistency. New uses and infill development are permissible within an Area of Consistency so long as the development that eventually occurs is compatible in scale and character with surrounding the surrounding area. [Comp. Plan at 5-23.]

Anaya does not agree that a C-2 designation is compatible with the character of the neighborhood. However, the question for purposes of appellate review is whether the

determination that a C-2 zone does not significantly conflict with the Comprehensive Plan is arbitrary or capricious. Balancing the competing policy objectives of consistency and change are within the City's discretion in administering zone changes.

The City's conclusion that the proposed zone changes do not conflict with the Comprehensive Plan is not arbitrary or capricious because there is a reasonable connection between the evidence presented and the conclusion reached, the decision demonstrates adequate consideration of the relevant Comprehensive Plan provisions, and the rationale is clearly explained. Accordingly, the conclusion that the proposed zone changes do not significantly conflict with the Comprehensive Plan is affirmed.

**b) NVAP**

Anaya claims the proposed C-2 zone conflicts with NVAP limitations on commercial development. According to Anaya, the proposed C-2 zoning is inappropriate because the NVAP limits commercial development to small scale uses and also limits the location of certain commercial uses. The EPC found that the proposed amendment "generally furthers the North Valley Area Plan goals and policies by providing a variety of choices for housing and lifestyles, planning to address land use conflicts such as between industrial and residential zoning, redevelopment of vacant land, promoting higher density development where there is adequate infrastructure, encouraging mixed use development, and promoting development that encourages more sustainable transportation options." [RP 000256-57 (underline in original).]

The EPC's explanation is inadequate because it does not address the particular NVAP provisions that Anaya claims limit the size and location of commercial development. Under the heading of "Preferred" the NVAP states:

Larger scale community or regional commercial development would be located in the available areas within the North I-25 Corridor.

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Large scale [industrial and heavy commercial] uses would be located only on the east mesa and would be served by transit.

[NVAP at 36–38.] The subject site is not within the North I-25 Corridor, nor is it suggested that it is on the east mesa. Though the EPC’s decision states the proposal “generally furthers” the goals and policies of the NVAP, it does not explain why the proposal does not significantly conflict with these particular provisions regarding commercial development.

The LUHO agreed with the EPC and also reviewed eleven NVAP policies Anaya claimed were applicable. The LUHO found ten of them were not applicable because they concerned site-planning, not zoning, or were visionary policies for maintaining rural areas. As to the eleventh—a policy discouraging “radical rezoning”—the LUHO found no evidence to support a finding that the proposed zone change constituted a radical rezoning and no indication that the EPC abused its discretion. [LUHO Recommendation at 13.]<sup>1</sup>

These explanations do not appear to address the purported limitations on future commercial development that the NVAP contains. Furthermore, while it is true the term “radical rezoning” is subjective, the NVAP’s purported restriction on commercial development is not subjective because it identifies with relative specificity the preferred location of future large scale commercial development.

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<sup>1</sup> In support of the proposed change to C-2, the City notes that the NVAP designates the zone change site as “Central Urban.” [LUHO Recommendation at 14.] Anaya argues that the Central Urban designation refers to residential density, not commercial uses. The Court need not address this argument. The term “Central Urban” is remnant terminology that is no longer in use. The NVAP explains that the term “Central Urban,” as well as other development area designations present in the North Valley and throughout the municipality, are descriptions imposed by the Comprehensive Plan that went into effect in 1975. [NVAP pp. 41–43.] The Comprehensive Plan the City adopted in March 2017 abandoned the Development Area terminology from 1975—including the term “Central Urban”—and replaced it with two new Development Area designations—Area of Change and Area of Consistency. [Comp. Plan Sec. 1.8.2.] Thus, the relevant inquiry is whether the proposed zone change is impermissible because it extends into an area the Comprehensive Plan designates an Area of Consistency. As discussed above, the City’s conclusion that the proposed C-2 zone is not in conflict with the Comprehensive Plan is not arbitrary or capricious.

The Court affords deference to the City's policy determinations regarding land use and zoning, and to its interpretation of the land use planning documents it creates. The Court is unable to exercise deference when the decision under appellate review does not demonstrate that due consideration was given to planning documents the EPC acknowledges are applicable.

In this case, the City's decision omits a discussion of what Anaya claims are express limitations on commercial development. It is not apparent from the written decision that the City gave adequate consideration to these provisions. A decision that "omits consideration of relevant factors or important aspects of the problem at hand" is arbitrary. *Vigil v. Pub. Emps. Retirement Bd.*, 2015-NMCA-079, ¶ 26 (citation and quotation marks omitted). Accordingly, the City's conclusion that the proposed zone changes do not conflict with the NVAP cannot be affirmed and will be remanded for further consideration by the City.

c) **Alameda Trail Plan**

The zone change site abuts the Alameda Drain and the EPC therefore found that the Alameda Trail Plan is relevant to the zone change request. The EPC determined that the proposal furthers the purpose of the Alameda Trail Plan by potentially creating additional amenities along the trail corridor and by providing access and a destination for future trail users. [RP at 000257.]

The Alameda Trail Plan recognizes the recreational value of the Alameda Trail and seeks to minimize conflicts between trail users and traffic.<sup>2</sup> Anaya argues the proposed C-2 zone conflicts with the Alameda Trail Plan because commercial development will increase traffic and congestion.

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<sup>2</sup> The Court was unable to locate the Alameda Trail Plan in the voluminous record but for purposes of appellate review accepts Anaya's characterization of its provisions as concerned with recreational value and pedestrian safety.

The potential for increased traffic due to development is not a basis to conclude that the City acted arbitrarily or capriciously when it found the proposed zone change is not in significant conflict with the Alameda Trail Plan. Increased vehicular traffic to the zone change site will not necessarily increase conflicts with current or future trail users. Traffic patterns as they relate to the adjacent Alameda Trail will depend on the details and design of the development. Furthermore, unlike her arguments regarding the NVAP, Anaya has identified no provision of the Alameda Trail Plan that limits or prohibits development of adjacent land. Anaya does not dispute the City's finding that the Alameda Trail Plan actually contemplates future development of the subject site by including in its narrative a statement that the southern portion of the trail is fronted by vacant properties that have potential for commercial uses. [RP 000257.]

Anaya has failed to demonstrate error. Accordingly, the City's conclusion that the proposed changes do not conflict with the Alameda Trail Plan is affirmed.

## **2. Section 1(D)**

Under Section 1(D), the applicant must demonstrate that the existing zoning is inappropriate. The applicant may meet its burden in one of three ways: (1) by showing there was an error when the existing zone map pattern was created; (2) by showing changed neighborhood or community conditions justify the change; or (3) by showing a different use category is more advantageous to the community as articulated in the Comprehensive Plan even if (1) or (2) do not apply. Resolution 270-1980, § 1(D).

Anaya argues the applicant did not meet its burden under Section 1(D) to show the existing zoning is inappropriate. The City determined the applicant had demonstrated both changed neighborhood conditions and that a different use category would be more advantageous.

Substantial evidence supports the City's finding that the existing zoning is inappropriate under Section 1(D)(3) because a different use category is more advantageous to the community

as articulated in the Comprehensive Plan. It is undisputed that the Comprehensive Plan favors buffers and transitions between various use categories. Under the current zoning configuration an industrial use zone (M-1) abuts a residential use zone (R-1) with no buffer or transition between the two. The proposed zoning, by contrast, provides a transition from C-2 to R-2 to R-1. The intervening R-2 zone also would provide a buffer between the higher intensity commercial C-2 zone to the south and the lower density R-1 zone to the north. Based on this undisputed evidence, it was not arbitrary or capricious for the City to conclude that a zone map amendment which provides a transition from more intense uses to less intense uses is more advantageous to the community, by reference to the Comprehensive Plan, than the existing zoning which does not provide transitions or a buffer.

Anaya has failed to demonstrate error. Accordingly, the City's conclusion that the applicant met its burden of demonstrating the existing zoning is inappropriate is affirmed. Given the Court's conclusion that the record supports the finding that the applicant met its burden under Section 1(D)(3), the Court need not consider Anaya's alternative argument that the applicant did not demonstrate changed circumstances under Section 1(D)(2).

### **3. Section 1(E)**

Section 1(E) contains the criteria for evaluating harm to adjacent property, the neighborhood or the community. Anaya argues the proposed C-2 zone will result in harm in the form of noise, light, congestion, pollution, reduced property values, and increased traffic. Anaya points to letters from area residents opposing the C-2 zone because of the perceived harm and testimony regarding the already difficult traffic conditions that exist at the intersection of Interstate 40 and Rio Grande Boulevard.

Resolution 270-1980 requires the City to give consideration to the harm that a zone change proposal may present. It states:

A change of zone shall not be approved where some of the permissive uses in the zone would be harmful to adjacent property, the neighborhood or the community.

Resolution 270-1980, § 1(E). Regarding harm, the City determined the “proposed R-2 and C-2 zones would not be harmful to the adjacent property, neighborhood, or community because the uses of these two zones are the same or less harmful than the uses already allowed on the subject site in the M-1 zone or in the adjacent R-3 zone to the east and the SU-2 LD MUD-2, which refers to the C-2 zone to the west.” [RP 000257–58.] The LUHO similarly determined that the proposed zone change was not harmful because it would permit uses that are less intense or of similar intensity than the current existing and surrounding zoning. [LUHO report at 12, 20.]

Section 1(E) is not satisfied by a general observation that the proposed zone is a less intense category of use than the current zones. By its express terms, Section 1(E) requires consideration of the permissive uses of the proposed zoning. The City’s decision does not identify the permissive uses of a C-2 zone nor does it contain a discussion or analysis of the harm, if any, the C-2 permissive uses may pose.

A decision that “omits consideration of relevant factors or important aspects of the problem at hand” is arbitrary. *Vigil*, 2015-NMCA-079, ¶ 26 (citation and quotation marks omitted). Accordingly, the conclusion that the proposed C-2 zone is not harmful cannot be affirmed. This issue will be remanded for further consideration by the City using the criteria in Resolution 270-1980, § 1(E).

#### **4. Section 1(G)**

Anaya argues the proposed C-2 commercial zone is contrary to Section 1(G) because it is motivated by improper economic interests. Anaya points to testimony that the C-2 zone is economically desirable to the applicant because it provides flexibility of use and therefore is more attractive to developers.

Anaya has failed to demonstrate error under Section 1(G). Whether the applicant has economic motivation for requesting a zone change is not the relevant inquiry. Resolution 270-1980 is not phrased in terms of “improper economic motive”; it states:

The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a change of zone.

Resolution 270-1980, § 1(G).

Upon conducting whole record review, the Court finds no indication that economic considerations pertaining to the applicant were the deciding factor in the City’s decision to approve the zone change. The City’s decision gives numerous factors that together support the zone change, none of which are economic considerations pertaining to the applicant. Primary among the considerations reflected in the record is that the proposed zone change advances many of the goals and policies contained in the Comprehensive Plan. [RP 000252–56.]

## **5. Section 1(I)**

Anaya argues the C-2 zone is an impermissible spot zone to the extent that it extends beyond the original M-1 parcel. Resolution 270-1980 prohibits spot zones unless certain conditions are met. Resolution 270-1980, § 1(I). The LUHO rejected Anaya spot zone argument because the areas created by the new R-2 and C-2 zones are 7.85 acres and 11.61 acres respectively, and are not considered small. [LUHO Recommendation at 23.]

Anaya has not met her burden of demonstrating error. First, a spot zone is created when zoning is applied “to one small area.” Resolution 270-1980, § 1(I). Anaya does challenge the LUHO’s finding that the areas created by the proposal do not qualify as small areas.

Second, Anaya challenges as a spot zone only the portion of the proposed C-2 zone that extends beyond the original M-1 zone. However, to qualify as a spot zone under Resolution 270-1980, the zone change request must create a zone that is different from the surrounding zone. In

this case, the C-2 parcel Anaya claims is a spot zone is part of a larger contiguous C-2 area and therefore is the same as, not different than, the surrounding zone. The City's conclusion that the proposed C-2 zone is not a spot zone is affirmed.

**6. Allegedly inaccurate and incomplete information provided by the applicant**

Anaya argues the proposed zone change violates Resolution 270-1980, § 1(B) because the applicant provided incomplete and inaccurate information. Section 1(B) states that stability of zoning is desirable and the burden is on the applicant to provide a sound justification for the change. Resolution 270-1980, § 1(B).

Anaya claims that at a facilitated meeting held in the community on May 23, 2017, an individual on the applicant's team gave an inaccurate description of the difference between C-1 and C-2 zoning. [Statement of Appellate Issues at 10; RP 622.] The Court expresses no opinion regarding whether the speaker provided accurate or inaccurate information, but concludes that comments offered at a facilitated meeting are not grounds for reversal on appeal.

Anaya argues there is a lack of information regarding the intended uses of the zone-change site. Anaya states that the Near North Valley Neighborhood Association is concerned about the intensity of the proposed C-2 commercial zoning, but is not necessarily opposed to special use zoning.

Lack of information regarding the applicant's intended uses is not grounds to reverse. Under Resolution 270-1980, a zone change request is evaluated with respect to the zone change itself and the permissive uses of the proposed zone, not any particular intended use which may depend on further approvals. Resolution 270-1980, §1(A), (E).

Furthermore, the Court, sitting in its appellate capacity, does not evaluate the pros and cons of alternative zoning categories. The only question before the Court on appeal is whether the zone change the City approved is in accordance with Resolution 270-1980, the substantive

law that governs zone map amendments. The City approved a change to C-2, not a special use permit. Whether a special use permit would have been more appropriate is not a matter the Court may consider when determining the merits of the appeal.

**7. Availability of alternative zoning**

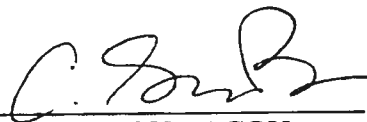
Finally, Anaya claims that legally compliant and more responsible zoning alternatives exist. Anaya suggests limiting the C-2 zone to the original M-1 area; using a less-intensive C-1 commercial zone; or applying special use zoning.

On appeal, it is not the function of the Court to determine if better zoning alternatives exist or to evaluate them. The existence of compliant alternatives is not grounds to reverse a zoning decision that otherwise is in accordance with Resolution 270-1980.

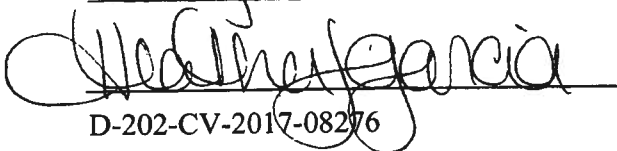
**IV. CONCLUSION**

The Court **REMANDS** the following two issues for additional consideration and reasoned decision making in accordance with Resolution 270-1980, §§ 1(C) and 1(E): (1) whether the proposed C-2 zone is in significant conflict with purported NVAP limitations on commercial development; and (2) whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, the neighborhood or the community. In all other respects, the decision is **AFFIRMED**.

**IT IS SO ORDERED.**

  
C. SHANNON BACON  
DISTRICT COURT JUDGE

This is to certify that a true and correct copy of  
the foregoing document was e-filed on  
January 7, 2019:

  
D-202-CV-2017-08276